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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,339	09/30/2003	Mickey L. Peshoff	P03-0242	5794

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EXAMINER

PAK, JOHN D

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,339

Applicant(s)

PESHOFF, MICKEY L.

Examiner

JOHN PAK

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claims 1-23 are pending in this application.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 2, 9 and 17, drawn to a composition that contains vitamins A, D and E, classified in class 514, subclass 167, 168, 458, 725, 729, 763.
- II. Claim 3, drawn to a composition that contains vitamins A, D and K, classified in class 514, subclass 167, 168, 681, 725, 729, 763.
- III. Claims 4 and 19, drawn to a composition that contains vitamin A, vitamin D and zinc oxide, classified in class 514, subclass 167, 168, 725, 729, 763, class 424, subclass 641, 642.
- IV. Claims 5, 10, 11, 12, drawn to a composition that contains vitamin A, vitamin D, and an antimicrobial agent, classified in class 514, subclass 167, 168, 725, 729, 763, and various other subclasses in class 424 and 514, depending on the chemical structure of the particular antimicrobial agent included in the composition.
- V. Claims 6, 13 and 14, drawn to a composition that contains vitamin A, vitamin D, and an antifungal agent, classified in class 514, subclass 167, 168, 725, 729, 763, and various other subclasses in class 424 and 514, depending on the chemical structure of the particular antifungal agent included in the composition.
- VI. Claim 20, drawn to a composition that contains zinc oxide, at least two fat-soluble vitamins, an antimicrobial agent, and an antifungal agent, classified in class 514,

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subclass 167, 168, 725, 729, 763, class 424, subclass 641, 642, and various other subclasses in classes 514 and 424, depending on the chemical structure of the particular antimicrobial and/or antifungal agent included in the composition.

- VII. Claim 21, drawn to a composition that contains zinc oxide, at least two fat soluble vitamins, and "further comprising" vitamins E and K, classified in class 514, subclasses 167, 168, 458, 681, 725, 729, 763, class 424, subclass 641, 642.

Claims 1, 7, 8, 15 and 16 link inventions I, II, III, IV and V. Claims 18, 22 and 23 link inventions III, VI and VIII. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 1, 7, 8, 15, 16, 18, 22 and 23. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

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The multiple inventions as set forth above are each distinct from the others because they contain divergent active agents. There are hundreds of thousands of publications that disclose myriad compositions containing vitamins such as A, D, E and/or K. Applicant has claimed his inventions so that the claims cannot possibly be searched and examined together. For example, for Group I, a composition containing vitamins A, D and E must be searched, whereas for group II, a composition containing vitamins A, D and K must be searched (vitamin E does not have to be present). Separate searching is therefore necessary for each of the seven distinct inventions, and separate grounds of rejection, if appropriate, must be provided for each of the seven distinct inventions. Given the extensive prior art related to vitamin containing compositions, which must be searched and reviewed just for one of the inventions, the additional search and examination burden for an additional invention group would place an undue burden on the Examiner if the restriction as set forth above were not required.

Therefore, for reasons of distinctness and undue burden, the restriction requirement as set forth above is deemed to be proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

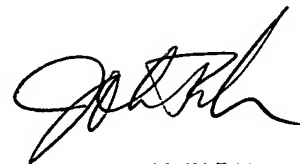
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is (571)272-0620. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Gary Kunz, can be reached on (571)272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JOHN PAK
PRIMARY EXAMINER
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